

Message

---

**From:** Smythe Anderson [AndersonS@api.org]  
**Sent:** 3/23/2020 9:27:34 PM  
**To:** Smythe Anderson [AndersonS@api.org]  
**CC:** Will Hupman [HupmanW@api.org]  
**Subject:** RE: API Letter to White House  
**Attachments:** 2020-03-23 API Letter to Wheeler.pdf

All –

As a follow-up to Friday's email, please find attached a letter from API SVP of Policy, Economics and Regulatory Affairs Frank Macchiarola to Administrator Wheeler with additional detail on non-essential compliance discretion and critical infrastructure designations.

Please don't hesitate to let me know if you have any questions.

Regards,  
Smythe

---

**From:** Smythe Anderson  
**Sent:** Friday, March 20, 2020 1:20 PM  
**To:** Smythe Anderson <AndersonS@api.org>  
**Cc:** Will Hupman <HupmanW@api.org>  
**Subject:** API Letter to White House

Good afternoon –

Please find attached today's letter from API CEO Mike Sommers to President Trump related to the COVID-19 pandemic. Of note, it requests a temporary waiver from non-essential compliance obligations at EPA, including seasonal fuel requirements and routine testing and reporting requirements.

Please let me know if you would like to discuss this in greater detail. I am happy to make myself available at your convenience.

Regards,  
Smythe

**Smythe Anderson**

Director | Federal Relations  
American Petroleum Institute | 200 Massachusetts Ave NW | Washington, DC 20001

O: 202.682.8040  
M: Ex. 6 Personal Privacy (PP)

[AndersonS@api.org](mailto:AndersonS@api.org)

[www.api.org](http://www.api.org)



Frank J. Macchiarola  
Senior Vice President  
Policy, Economics & Regulatory Affairs  
API  
200 Massachusetts, NW  
Washington, DC 20001  
Telephone 202-682-8167  
Fax 202-682-8426  
Email [macchiarolaf@api.org](mailto:macchiarolaf@api.org)  
[www.api.org](http://www.api.org)

March 23, 2020

The Honorable Andrew Wheeler, Administrator  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Wheeler:

On behalf of the members of the American Petroleum Institute,<sup>1</sup> I would like to thank you for your efforts at the Environmental Protection Agency to assist in our nation's response to the global crisis arising from the COVID-19 pandemic. The oil and natural gas industry, like other critical infrastructure sectors, is working tirelessly to help ensure there is no interruption in our supply chains as a result of these unprecedented circumstances. We play a critical role in providing affordable and reliable energy, which is essential to maintaining our national security and will help drive our economic recovery. As indicated in a letter dated March 20<sup>th</sup> from API President and CEO Michael J. Sommers to President Donald J. Trump (attached), there are two potential overarching issues that may affect our industry: critical infrastructure designations and temporary relief through non-essential compliance discretion. The purpose of this letter is to specifically address the issues within your agency's purview associated with non-essential compliance discretion.

### **Non-essential Compliance Discretion**

The oil and natural gas industry remains committed to prioritizing safe and reliable operations, but is taking into consideration that there may be limited personnel capacity

---

<sup>1</sup> API represents all segments of America's oil and natural gas industry. Its more than 600 members produce, process, and distribute most of the nation's energy. The industry supports 10.9 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In its first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.



to manage the full scope of the current regulatory requirements. As such, we are requesting assistance from your agency in temporarily waiving non-essential compliance obligations, and we request coordination with your state agency counterparts as necessary. As indicated in the letter to President Trump, these issues may include recordkeeping, training or other non-safety critical requirements.

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking Federal and State agencies to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with:

- Quarantine/treatment due to employee exposure to COVID-19;
- Measures taken by the industry to avoid COVID-19 transmission and spread;
- Good faith attempts by the industry to comply with national, state or local edicts related to controlling the virus;
- Addressing the risks of continuing to conduct routine agency inspections; and
- Contractor availability and supply chain disruptions related to all of the above.

Individual company requests for relief would be burdensome to file and track and a more holistic approach may be necessary in an unprecedented situation such as the one we are facing. Nonetheless, industry will make efforts to comply with requirements, but obviously the situation may limit some activities.

Additionally, many of the nation's petroleum refineries are parties to one or more state or federal judicial or administrative consent agreements or decrees with the U.S. EPA and/or its state counterparts. These agreements generally include force majeure clauses which require the settling party to notify the government of known or anticipated compliance delays within tight timeframes. Failure to meet the prescribed notification timeframe often voids any enforcement protection the settling party might otherwise have under the agreement. These hurdles become particularly problematic in the current climate of the COVID-19 disease, where delays in meeting settlement



requirements might occur due to workforce impacts or reductions or other disruptions that are difficult to predict and continue to evolve. They may also be complicated by the daily pronouncement of protection measures suggested or required by national, state and local governments. There may be a need for federal and state officials to work with individual companies as part of their settlement agreements.

Given the considerations associated with the importance of following CDC guidance for public health, the attached list provides detailed examples of issues for which industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic.

In closing, the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat and we thank your agency for its efforts key to this undertaking. We look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis. Thank you for consideration of the requests outlined in this letter, and please do not hesitate to contact API as we stand ready to assist in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Macchiarola", written in a cursive style.

Frank J. Macchiarola

## **Attachment: API Member Company Priority Issues for COVID-19 Response**

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking EPA to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with the identified constraints. Given the uncertainty of the severity and duration of this pandemic, the following categories of constraints have been identified:

- Category 1: Administrative constraints while working remotely
- Category 2: Physical constraints with on-site testing/monitoring requirements
- Category 3: Operability of assets

For certain constraints, we have also identified some specific potential solutions in sub-bullets.

### **Category 1: Administrative challenges while working remotely**

EPA and State Agency examples include but are not limited to:

- Wet signatures requirements on permit applications and reports, such as Title V permit applications. Responsible officials may not have ready access to printers or a DocuSign option. Clarity needed on alternatives.
- Temporary relief for notary witnessing of signatures on permits, etc.
- Potential delay to project permits due to closed state agency offices/canceled meetings that may reset the public comment period.
- Deferred permit renewal applications for expiring permits to address revised work schedules/arrangements.
- Potential to miss certifying laboratory equipment unless NIST certified instruments can be purchased and delivered in time.
- Periodic certification and reporting:
  - Deferred filing of periodic reports

- Examples include emissions inventory, emissions banking and trading, TRI reports and rule- or permit-required periodic reports.
- Filing of reports without the normal signatures (where plant manager or formal designee is unavailable).

## **Category 2: Physical challenges with on-site testing/monitoring/reporting requirements**

EPA and State Agency examples include but are not limited to:

- Waivers of seasonal fuels requirements
- Fuels reporting and compliance
  - Request waivers or enforcement discretion for late reports due to access and resource limitations for the following types of reports:
    - Annual gasoline and Renewable Fuel Standard (RFS) reports
    - EMTS Fuels ABT Credit generation and retirement for compliance with gasoline programs
    - EMTS RIN retirements for annual compliance with RFS standards
- Annual gasoline and RFS program attest engagements
- Fugitive Leak Detection and Repair (LDAR)
  - Deferred LDAR monitoring
  - Late repair times
  - Late recheck of LDAR component after monitoring
  - Delayed reporting
  - Inability to address delay of repair during unit shutdowns due to personnel, supply or external resource shortages or disruptions
- Delayed GHG reporting
- Benzene Waste Operations (BWON)
  - Deferred monitoring
  - Late repair times
  - Delayed reporting

- Potential for delayed or missed sampling required for reporting or to demonstrate exemption from control
- NSPS & MACT
  - Regulatory noncompliance due to limited onsite personnel or external resource shortages or disruptions
  - Late reports due to limited onsite personnel or external resource shortages or disruptions
  - Subpart XX tank trucks vapor tightness tests may not be available
  - Lower shipping levels could prevent enough product available to float an internal floating roof tank when refilling, resulting in a compliance issue under GD GACT or NSPS Subpart Kb
- CEMS and stack tests
  - Delayed stack and RATA testing
  - Missed or late CEMS evaluation
  - Unable to repair CEMS due to specialized knowledge vested in personnel
  - Unable to repair CEMS due to parts unavailability
  - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
  - Waive or delay 6-month smoke school recertification due to cancellation of training/testing sessions to avoid unavailability of emissions observers.
- Cooling tower sampling
  - Delayed sampling and analysis
  - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
  - Lack of lab availability
- Fence line monitoring
  - Unable to change sample tubes in a timely manner
  - Disruptions in lab shipments
  - Lab analytical delays

- Delayed reports from contractors whose employees are quarantined or in remote work arrangements
- Different verifiers for Title V obligations may be unavailable to certify compliance with the requirements
- Extend recurring/refresh deadline for Method 9 (visible emissions) certification.
- Extend deadlines for required visible emission monitoring of permitted facilities.
- Drinking Water Permit testing and reporting requirements
  - Provide flexibility on routine monitoring/sampling/analysis required drinking water permits.
  - Expected delays in laboratory analysis and short hold time for coliform
- Effluent inspections, sampling and reporting (NPDES and SWPPP)
  - Deferred inspections (monthly, quarterly, etc.).
  - Deferred sampling and WET testing.
  - Deferred filing of periodic reports.
  - Late lab turn-around time on sample results.
  - Missed hold-time on samples.
  - Delayed reporting.
  - Delayed annual training.
  - Contractor who typically performs grab samples is temporarily unable to access site pending medical screening.
  - Improper storage temperature.
  - Inability to collect discharge samples within specified time period due to unavailability of personnel.
  - Storm water monitoring and compliance samples within required timeframe (for rain events) may be problematic.
  - Hydrotesting – providing for pre-approval of low-risk discharges and/or a streamlined approval process. This would help prevent holding up construction and field work to get these permits as the current approval processes are likely to slow down with agencies working remotely.

- Lack of lab availability.
- NPDES/Discharge Permits (EPA/State)
  - Effluent inspections, sampling and reporting.
  - Deferred inspections (monthly, quarterly, etc.).
  - Deferred sampling and WET testing.
  - Deferred filing of periodic reports.
  - Late lab turn-around time on sample results.
  - Missed hold-time on samples.
  - Delayed reporting.
  - Contractor who typically performs daily grab samples is temporarily unable to access site pending medical screening.
  - Improper storage temperature.
- Storm Water Permit Compliance (SWPPP/SWP/Discharge Plans) (EPA/State)
  - Possible disruption of required inspections.
  - Challenges with post storm event inspections due to contractor availability.
  - Sample collection and delayed laboratory analyses.
  - Possible delay of BMP inspections and non-compliance repairs to BMPs due to limited contractor availability.
  - Delayed monitoring/annual reporting requirements
- Soil and/or groundwater remediation
  - Delayed sampling and reporting requirements.
  - Delayed project implementation.
  - Lack of lab availability.
- Tanks
  - Potential for late repairs on failed tank inspections
  - Tank inspections (deadlines and logistical issues)
  - Delayed above or underground tank inspections
- Hazardous waste management
  - Ensure that waste and hazardous waste fall under the definition of essential travel/trade.

- Deferral of movements past time limits, including 3-day satellite accumulation time limit and 90-day accumulation time limit.
- Impacts on speculative accumulation requirements.
- Delayed analytics and delayed waste characterization.
- Delayed reporting of specific RCRA permit or remediation program.
- Manifest management disruptions.
- TSD permit noncompliance due to personnel, supply or external resource shortages or disruptions.
- Deferral of weekly inspections.
- Delay of annual training.
- Potential for missed weekly RCRA inspections due to personnel shortage.
- Temporary EPA ID number request processing.
- Renewal of Hazardous Material Transporter ID numbers (annual; via DOT).
- Delayed/limited analytical laboratory support for profiling.
- SPCC
  - SPCC applicability determinations.
  - Generation of site security diagrams.
  - Secondary containment repairs.
  - Deferral of daily and monthly inspections.
  - Deferral of annual training and drills.
  - API Standard 653 integrity inspections.
- Underground Injection Control (UIC)
  - Overall UIC compliance obligations.
  - Deferred Mechanical Integrity Testing (MITs).
  - Deferred monthly/annual monitoring requirements.
  - Surface Injection Pressure monitoring.
  - Injection fluid sampling & laboratory analyses.
  - Monthly disposal volume reporting.
- Self-audits/disclosures (where applicable)
  - Late notices.
  - Late Disclosures of Violation and other submittals on pending audits.

- Late implementation of corrective actions.
- Emergency response drills and mandatory equipment deployment to demonstrate emergency readiness.
- Past-due regulatory training that can only be done in a face-to-face environment, e.g. Method 9 opacity certification.
- Fees for TSCA risk evaluation
  - Manufacturers of 20 high priority chemicals required to conduct risk evaluation by May 27, 2020. Delays needed to gather information from many sources in short timeframe.
- Chemical testing requirements
  - Laboratory capacity may be affected – could impact TSCA testing requests/requirements.
- Chemical Data Reporting (CDR)
  - EPA extending CDR reporting 2 months; EPA should consider additional extensions from potential delays due to needed EPA training, electronic reporting system functioning, etc.

### **Category 3: Operability of Assets**

The industry is already prioritizing their resources for the continued maintenance of its facilities, which is a business-critical activity. This is necessary to not only provide for the safety of its constrained employee and contractor workforce, but also to continue to produce the fuels that the nation depends upon daily. Operators are continuing to obtain permits for activities that are deemed essential to the safe operation of their facilities.

Temporary relief from the agency requirements outlined in Categories 1 and 2 are not expected to result in a significant impact to human health or the environment. By providing temporary relief from those requirements, operators and suppliers will be able to prioritize their resources on those critical activities to enable the continued production of fuels and products.

Message

---

**From:** Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**Sent:** 3/24/2020 1:24:48 PM  
**To:** Frank Macchiarola [MacchiarolaF@api.org]  
**CC:** Bodine, Susan [bodine.susan@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Bill Koetzle [KoetzleB@api.org]; Howard Feldman [Feldman@api.org]  
**Subject:** Re: API Letter to Administrator Wheeler 3/23/20

Thank you, Frank. This is very helpful. Will be in touch.

Sent from my iPhone

On Mar 23, 2020, at 4:49 PM, Frank Macchiarola <MacchiarolaF@api.org> wrote:

Please find attached a letter from API to Administrator Wheeler dated 3/23/20 regarding non-essential compliance discretion and critical infrastructure designations. Also, please find attached a referenced letter from API's Mike Sommers to President Donald J. Trump of 3/20/20. Please let me know if you have any questions. Thank you for your attention to this matter.

Best,

Frank

<Letter to Admin Wheeler 3.23.20-final copy.pdf>

<3.20.2020 API Letter to President Trump.pdf>

Message

---

**From:** Frank Macchiarola [MacchiarolaF@api.org]  
**Sent:** 3/23/2020 8:48:51 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**CC:** Bill Koetzle [KoetzleB@api.org]; Howard Feldman [Feldman@api.org]  
**Subject:** API Letter to Administrator Wheeler 3/23/20  
**Attachments:** Letter to Admin Wheeler 3.23.20-final copy.pdf; 3.20.2020 API Letter to President Trump.pdf

Please find attached a letter from API to Administrator Wheeler dated 3/23/20 regarding non-essential compliance discretion and critical infrastructure designations. Also, please find attached a referenced letter from API's Mike Sommers to President Donald J. Trump of 3/20/20. Please let me know if you have any questions. Thank you for your attention to this matter.

Best,  
Frank



**Michael J. Sommers**  
President & Chief Executive Officer  
API  
200 Massachusetts Avenue, NW  
Suite 1100  
Washington, DC 20001-5571  
202-682-8500  
sommersm@api.org

March 20, 2020

The Honorable Donald J. Trump  
President of the United States  
The White House  
Washington, DC 20500

Dear President Trump:

On behalf of the members of the American Petroleum Institute,<sup>1</sup> I would like to thank you for your leadership in our nation's response to the global crisis arising from COVID-19. The oil and natural gas industry, like other critical infrastructure sectors, is working tirelessly to ensure there is no interruption in our supply chains as a result of this pandemic. We play a critical role in providing affordable and reliable energy to American families and businesses, which is essential to maintain our national security and will drive our economic recovery. We have identified two potential overarching issues we would like to bring to your attention: critical infrastructure designations and temporary relief through non-essential compliance discretion necessitated by the need to follow appropriate guidelines to mitigate this pandemic.

### **Critical Infrastructure Designations**

As a result of the restrictions and guidelines issued by the President of the United States' Coronavirus Task Force, the Centers for Disease Control and Prevention, and potential decisions at the state and local levels, I am writing to request that the Administration and states recognize that API's members provide the necessary fuels that ensure products and services are delivered in a timely fashion around the country. Our supply chain is robust and complex. Ensuring that our entire supply chain is protected from these impacts to the fullest extent possible is of great importance and will enable our industry to continue to provide the fuels that power our communities.

---

<sup>1</sup> API represents all segments of America's oil and natural gas industry. Its more than 600 members produce, process, and distribute most of the nation's energy. The industry supports 10.9 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In its first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.



To achieve this goal, I request that your Administration ensure that state and local governments receive timely guidance on critical infrastructure personnel, including our employees. Such guidance should enable employees who provide critical support to our nation's infrastructure to reach their work locations and continue to provide their essential services. We worked with the Department of Homeland Security, through the Oil and Natural Gas Sector Coordinating Council, to ensure appropriate personnel were included in such guidance. We request your Administration's support in ensuring that this guidance reaches the appropriate state and local officials across the nation so that critical personnel designations are similar across different jurisdictions.

### **Non-essential Compliance Discretion**

We are grateful for the ongoing work of your Administration in providing appropriate guidelines for mitigation of the pandemic. In light of these guidelines, the oil and natural gas industry needs to maintain safe and reliable operations, taking into consideration that there may be limited personnel capacity to manage the full scope of the current regulatory requirements. As such, we will be requesting assistance in temporarily waving non-essential compliance obligations from the relevant agencies and departments within your Administration and/or their state counterparts, and may include recordkeeping, training or other non-safety critical requirements. In the coming days and as events warrant, we will be providing these government entities with greater specificity regarding this request.

These types of requests could include, but are not limited to, issues such as:

- Department of Transportation
  - Hours of service limitations
  - Nonessential inspections
- Department of the Interior
  - Reporting and auditing requirements
  - Leasing and permitting considerations
  - Nonessential training
- Department of Homeland Security/Department of State
  - Foreign sourced goods
  - Resolution of visa issues



- Environmental Protection Agency
  - Waivers of seasonal fuel requirements (and relevant associated state waivers)
  - Routine testing and reporting requirements

In closing, the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat, and we look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis. Thank you for consideration of the requests outlined in this letter, and please do not hesitate to have your Administration contact API as we stand ready to assist in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Sommers", written over a horizontal line.

Michael J. Sommers

cc: U.S. Governors



Frank J. Macchiarola  
Senior Vice President  
Policy, Economics & Regulatory Affairs  
API  
200 Massachusetts, NW  
Washington, DC 20001  
Telephone 202-682-8167  
Fax 202-682-8426  
Email [macchiarolaf@api.org](mailto:macchiarolaf@api.org)  
[www.api.org](http://www.api.org)

March 23, 2020

The Honorable Andrew Wheeler, Administrator  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Wheeler:

On behalf of the members of the American Petroleum Institute,<sup>1</sup> I would like to thank you for your efforts at the Environmental Protection Agency to assist in our nation's response to the global crisis arising from the COVID-19 pandemic. The oil and natural gas industry, like other critical infrastructure sectors, is working tirelessly to help ensure there is no interruption in our supply chains as a result of these unprecedented circumstances. We play a critical role in providing affordable and reliable energy, which is essential to maintaining our national security and will help drive our economic recovery. As indicated in a letter dated March 20<sup>th</sup> from API President and CEO Michael J. Sommers to President Donald J. Trump (attached), there are two potential overarching issues that may affect our industry: critical infrastructure designations and temporary relief through non-essential compliance discretion. The purpose of this letter is to specifically address the issues within your agency's purview associated with non-essential compliance discretion.

### **Non-essential Compliance Discretion**

The oil and natural gas industry remains committed to prioritizing safe and reliable operations, but is taking into consideration that there may be limited personnel capacity

---

<sup>1</sup> API represents all segments of America's oil and natural gas industry. Its more than 600 members produce, process, and distribute most of the nation's energy. The industry supports 10.9 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In its first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.



to manage the full scope of the current regulatory requirements. As such, we are requesting assistance from your agency in temporarily waiving non-essential compliance obligations, and we request coordination with your state agency counterparts as necessary. As indicated in the letter to President Trump, these issues may include recordkeeping, training or other non-safety critical requirements.

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking Federal and State agencies to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with:

- Quarantine/treatment due to employee exposure to COVID-19;
- Measures taken by the industry to avoid COVID-19 transmission and spread;
- Good faith attempts by the industry to comply with national, state or local edicts related to controlling the virus;
- Addressing the risks of continuing to conduct routine agency inspections; and
- Contractor availability and supply chain disruptions related to all of the above.

Individual company requests for relief would be burdensome to file and track and a more holistic approach may be necessary in an unprecedented situation such as the one we are facing. Nonetheless, industry will make efforts to comply with requirements, but obviously the situation may limit some activities.

Additionally, many of the nation's petroleum refineries are parties to one or more state or federal judicial or administrative consent agreements or decrees with the U.S. EPA and/or its state counterparts. These agreements generally include force majeure clauses which require the settling party to notify the government of known or anticipated compliance delays within tight timeframes. Failure to meet the prescribed notification timeframe often voids any enforcement protection the settling party might otherwise have under the agreement. These hurdles become particularly problematic in the current climate of the COVID-19 disease, where delays in meeting settlement



requirements might occur due to workforce impacts or reductions or other disruptions that are difficult to predict and continue to evolve. They may also be complicated by the daily pronouncement of protection measures suggested or required by national, state and local governments. There may be a need for federal and state officials to work with individual companies as part of their settlement agreements.

Given the considerations associated with the importance of following CDC guidance for public health, the attached list provides detailed examples of issues for which industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic.

In closing, the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat and we thank your agency for its efforts key to this undertaking. We look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis. Thank you for consideration of the requests outlined in this letter, and please do not hesitate to contact API as we stand ready to assist in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Macchiarola", written in a cursive style.

Frank J. Macchiarola



## **Attachment: API Member Company Priority Issues for COVID-19 Response**

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking EPA to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with the identified constraints. Given the uncertainty of the severity and duration of this pandemic, the following categories of constraints have been identified:

- Category 1: Administrative constraints while working remotely
- Category 2: Physical constraints with on-site testing/monitoring requirements
- Category 3: Operability of assets

For certain constraints, we have also identified some specific potential solutions in sub-bullets.

### **Category 1: Administrative challenges while working remotely**

EPA and State Agency examples include but are not limited to:

- Wet signatures requirements on permit applications and reports, such as Title V permit applications. Responsible officials may not have ready access to printers or a DocuSign option. Clarity needed on alternatives.
- Temporary relief for notary witnessing of signatures on permits, etc.
- Potential delay to project permits due to closed state agency offices/canceled meetings that may reset the public comment period.
- Deferred permit renewal applications for expiring permits to address revised work schedules/arrangements.
- Potential to miss certifying laboratory equipment unless NIST certified instruments can be purchased and delivered in time.
- Periodic certification and reporting:
  - Deferred filing of periodic reports

- Examples include emissions inventory, emissions banking and trading, TRI reports and rule- or permit-required periodic reports.
- Filing of reports without the normal signatures (where plant manager or formal designee is unavailable).

## **Category 2: Physical challenges with on-site testing/monitoring/reporting requirements**

EPA and State Agency examples include but are not limited to:

- Waivers of seasonal fuels requirements
- Fuels reporting and compliance
  - Request waivers or enforcement discretion for late reports due to access and resource limitations for the following types of reports:
    - Annual gasoline and Renewable Fuel Standard (RFS) reports
    - EMTS Fuels ABT Credit generation and retirement for compliance with gasoline programs
    - EMTS RIN retirements for annual compliance with RFS standards
- Annual gasoline and RFS program attest engagements
- Fugitive Leak Detection and Repair (LDAR)
  - Deferred LDAR monitoring
  - Late repair times
  - Late recheck of LDAR component after monitoring
  - Delayed reporting
  - Inability to address delay of repair during unit shutdowns due to personnel, supply or external resource shortages or disruptions
- Delayed GHG reporting
- Benzene Waste Operations (BWON)
  - Deferred monitoring
  - Late repair times
  - Delayed reporting

- Potential for delayed or missed sampling required for reporting or to demonstrate exemption from control
- NSPS & MACT
  - Regulatory noncompliance due to limited onsite personnel or external resource shortages or disruptions
  - Late reports due to limited onsite personnel or external resource shortages or disruptions
  - Subpart XX tank trucks vapor tightness tests may not be available
  - Lower shipping levels could prevent enough product available to float an internal floating roof tank when refilling, resulting in a compliance issue under GD GACT or NSPS Subpart Kb
- CEMS and stack tests
  - Delayed stack and RATA testing
  - Missed or late CEMS evaluation
  - Unable to repair CEMS due to specialized knowledge vested in personnel
  - Unable to repair CEMS due to parts unavailability
  - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
  - Waive or delay 6-month smoke school recertification due to cancellation of training/testing sessions to avoid unavailability of emissions observers.
- Cooling tower sampling
  - Delayed sampling and analysis
  - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
  - Lack of lab availability
- Fence line monitoring
  - Unable to change sample tubes in a timely manner
  - Disruptions in lab shipments
  - Lab analytical delays

- Delayed reports from contractors whose employees are quarantined or in remote work arrangements
- Different verifiers for Title V obligations may be unavailable to certify compliance with the requirements
- Extend recurring/refresh deadline for Method 9 (visible emissions) certification.
- Extend deadlines for required visible emission monitoring of permitted facilities.
  
- Drinking Water Permit testing and reporting requirements
  - Provide flexibility on routine monitoring/sampling/analysis required drinking water permits.
  - Expected delays in laboratory analysis and short hold time for coliform
- Effluent inspections, sampling and reporting (NPDES and SWPPP)
  - Deferred inspections (monthly, quarterly, etc.).
  - Deferred sampling and WET testing.
  - Deferred filing of periodic reports.
  - Late lab turn-around time on sample results.
  - Missed hold-time on samples.
  - Delayed reporting.
  - Delayed annual training.
  - Contractor who typically performs grab samples is temporarily unable to access site pending medical screening.
  - Improper storage temperature.
  - Inability to collect discharge samples within specified time period due to unavailability of personnel.
  - Storm water monitoring and compliance samples within required timeframe (for rain events) may be problematic.
  - Hydrotesting – providing for pre-approval of low-risk discharges and/or a streamlined approval process. This would help prevent holding up construction and field work to get these permits as the current approval processes are likely to slow down with agencies working remotely.

- Lack of lab availability.
- NPDES/Discharge Permits (EPA/State)
  - Effluent inspections, sampling and reporting.
  - Deferred inspections (monthly, quarterly, etc.).
  - Deferred sampling and WET testing.
  - Deferred filing of periodic reports.
  - Late lab turn-around time on sample results.
  - Missed hold-time on samples.
  - Delayed reporting.
  - Contractor who typically performs daily grab samples is temporarily unable to access site pending medical screening.
  - Improper storage temperature.
- Storm Water Permit Compliance (SWPPP/SWP/Discharge Plans) (EPA/State)
  - Possible disruption of required inspections.
  - Challenges with post storm event inspections due to contractor availability.
  - Sample collection and delayed laboratory analyses.
  - Possible delay of BMP inspections and non-compliance repairs to BMPs due to limited contractor availability.
  - Delayed monitoring/annual reporting requirements
- Soil and/or groundwater remediation
  - Delayed sampling and reporting requirements.
  - Delayed project implementation.
  - Lack of lab availability.
- Tanks
  - Potential for late repairs on failed tank inspections
  - Tank inspections (deadlines and logistical issues)
  - Delayed above or underground tank inspections
- Hazardous waste management
  - Ensure that waste and hazardous waste fall under the definition of essential travel/trade.

- Deferral of movements past time limits, including 3-day satellite accumulation time limit and 90-day accumulation time limit.
- Impacts on speculative accumulation requirements.
- Delayed analytics and delayed waste characterization.
- Delayed reporting of specific RCRA permit or remediation program.
- Manifest management disruptions.
- TSD permit noncompliance due to personnel, supply or external resource shortages or disruptions.
- Deferral of weekly inspections.
- Delay of annual training.
- Potential for missed weekly RCRA inspections due to personnel shortage.
- Temporary EPA ID number request processing.
- Renewal of Hazardous Material Transporter ID numbers (annual; via DOT).
- Delayed/limited analytical laboratory support for profiling.
- SPCC
  - SPCC applicability determinations.
  - Generation of site security diagrams.
  - Secondary containment repairs.
  - Deferral of daily and monthly inspections.
  - Deferral of annual training and drills.
  - API Standard 653 integrity inspections.
- Underground Injection Control (UIC)
  - Overall UIC compliance obligations.
  - Deferred Mechanical Integrity Testing (MITs).
  - Deferred monthly/annual monitoring requirements.
  - Surface Injection Pressure monitoring.
  - Injection fluid sampling & laboratory analyses.
  - Monthly disposal volume reporting.
- Self-audits/disclosures (where applicable)
  - Late notices.
  - Late Disclosures of Violation and other submittals on pending audits.

- Late implementation of corrective actions.
- Emergency response drills and mandatory equipment deployment to demonstrate emergency readiness.
- Past-due regulatory training that can only be done in a face-to-face environment, e.g. Method 9 opacity certification.
- Fees for TSCA risk evaluation
  - Manufacturers of 20 high priority chemicals required to conduct risk evaluation by May 27, 2020. Delays needed to gather information from many sources in short timeframe.
- Chemical testing requirements
  - Laboratory capacity may be affected – could impact TSCA testing requests/requirements.
- Chemical Data Reporting (CDR)
  - EPA extending CDR reporting 2 months; EPA should consider additional extensions from potential delays due to needed EPA training, electronic reporting system functioning, etc.

### **Category 3: Operability of Assets**

The industry is already prioritizing their resources for the continued maintenance of its facilities, which is a business-critical activity. This is necessary to not only provide for the safety of its constrained employee and contractor workforce, but also to continue to produce the fuels that the nation depends upon daily. Operators are continuing to obtain permits for activities that are deemed essential to the safe operation of their facilities.

Temporary relief from the agency requirements outlined in Categories 1 and 2 are not expected to result in a significant impact to human health or the environment. By providing temporary relief from those requirements, operators and suppliers will be able to prioritize their resources on those critical activities to enable the continued production of fuels and products.

Message

---

**From:** Peter Lidiak [plidiak@ILTA.ORG]  
**Sent:** 4/16/2020 2:24:57 PM  
**To:** Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]  
**CC:** Mia, Marcia [Mia.Marcia@epa.gov]; Shine, Brenda [Shine.Brenda@epa.gov]; David W. Murk [MurkD@api.org]; David Friedman (dfriedman@afpm.org) [dfriedman@afpm.org]  
**Subject:** Request for Conference Call on Tank Storage Inspections

Dear Assistant Administrator Bodine and Deputy Assistant Administrator Starfield,

I am writing on behalf of the American Fuel and Petrochemical Association, American Petroleum Institute and International Liquid Terminals Association to request a conference call with you to discuss industry concerns regarding the inspection of petroleum product tanks. Tank volumes are becoming filled to near capacity with product because of the extreme demand destruction the market is experiencing as people shelter in place and work from home due to the Coronavirus pandemic. As a result, tank operators do not have the flexibility they would normally have to move products out of tanks to conduct out-of-service inspections that require cleaning and degassing. Our members are also finding it increasingly difficult to get crews that are qualified to clean these tanks and inspectors to conduct inspections because of the various requirements for social distancing and worker illnesses. We would like to discuss some actions we believe EPA could take to ease this potential supply risk.

This issue is of immediate concern and we hope this call may be conducted sometime in the next week.

Thank you for your consideration.

Sincerely,

Peter Lidiak  
Vice President, Regulatory Affairs  
International Liquid Terminals Association  
[plidiak@ilta.org](mailto:plidiak@ilta.org) | Direct: 571-444-0282  
Main number: 703-875-2011

## Appointment

---

**From:** MattinglyT@api.org [MattinglyT@api.org]  
**Sent:** 3/24/2020 6:47:25 PM  
**To:** Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Rachel Jones [rjones@nam.org]; Derrick Morgan [DMorgan@afpm.org]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Smythe Anderson [AndersonS@api.org]  
**CC:** Willis, Sharnett [Willis.Sharnett@epa.gov]

**Subject:** Call with Troy, Ross, Rachel, and Derrick  
**Location:** Call

**Start:** 3/25/2020 8:00:00 PM  
**End:** 3/25/2020 9:00:00 PM  
**Show Time As:** Tentative

**Recurrence:** (none)

---

### Join Skype Meeting

Trouble Joining? [Try Skype Web App](#)

### Join by phone

Toll number:  Dial-in Number

English (United States)

[Find a local number](#)

Conference ID

[Forgot your dial-in PIN?](#) | [Help](#)

## Appointment

---

**From:** MattinglyT@api.org [MattinglyT@api.org]  
**Sent:** 3/24/2020 6:09:14 PM  
**To:** Troy Lyons [tlyons@massiepartners.com]; Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Rachel Jones [rjones@nam.org]; Derrick Morgan [DMorgan@afpm.org]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**Subject:** Call with Troy, Ross, Rachel, and Derrick  
**Location:** Skype  
**Start:** 3/25/2020 8:00:00 PM  
**End:** 3/25/2020 9:00:00 PM  
**Show Time As:** Tentative  
  
**Recurrence:** (none)

---

### Join Skype Meeting

Trouble Joining? [Try Skype Web App](#)

#### Join by phone

Toll number: **Ex. 6 Personal Privacy (PP)** Dial-in Number English (United States)

[Find a local number](#)

Conference ID: **Ex. 6 Personal Privacy (PP)**

[Forgot your dial-in PIN?](#) | [Help](#)

**From:** Bill Koetzle <KoetzleB@api.org>  
**Sent:** Thursday, March 19, 2020 9:32 AM  
**To:** Troy Lyons <tlyons@axpc.org>; Eisenberg, Ross <Ross\_Eisenberg@americanchemistry.com>; Rachel Jones <rjones@nam.org>; Derrick Morgan <DMorgan@afpm.org>  
**Cc:** Todd Mattingly <MattinglyT@api.org>  
**Subject:** standing call

All – First, hope all of you are well and taking care of yourself. Given the fluidity of our current environment, I thought it might be valuable for us to do a standing call to exchange information and provide mutual support. If you are like me, im on calls all day, but thought this would be useful. I would propose something late in the day, say 430 and see if that works. Todd can set us up a skype call. Let me know if this makes sense and is of interest and please extend to others you think would find useful. Take care

## Appointment

---

**From:** Bill Koetzle [KoetzleB@api.org]  
**Sent:** 3/24/2020 6:47:38 PM  
**To:** Bill Koetzle [KoetzleB@api.org]; Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Rachel Jones [rjones@nam.org]; Derrick Morgan [DMorgan@afpm.org]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Smythe Anderson [AndersonS@api.org]  
**CC:** Willis, Sharnett [Willis.Sharnett@epa.gov]  
**Subject:** Call with Troy, Ross, Rachel, and Derrick  
**Location:** Call  
**Start:** 3/25/2020 8:00:00 PM  
**End:** 3/25/2020 9:00:00 PM  
**Show Time As:** Tentative

**Recurrence:** (none)

---

### Join Skype Meeting

Trouble Joining? [Try Skype Web App](#)

### Join by phone

Toll number: Ex. 6 Personal Privacy (PP) Dial-in Number

English (United States)

[Find a local number](#)

Conference ID: Ex. 6 Personal Privacy (PP)

[Forgot your dial-in PIN?](#) [Help](#)

## Appointment

---

**From:** Bill Koetzle [KoetzleB@api.org]  
**Sent:** 3/24/2020 6:09:26 PM  
**To:** Bill Koetzle [KoetzleB@api.org]; Troy Lyons [tlyons@massiepartners.com]; Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Rachel Jones [rjones@nam.org]; Derrick Morgan [DMorgan@afpm.org]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**Subject:** Call with Troy, Ross, Rachel, and Derrick  
**Location:** Skype  
**Start:** 3/25/2020 8:00:00 PM  
**End:** 3/25/2020 9:00:00 PM  
**Show Time As:** Tentative  
  
**Recurrence:** (none)

---

### Join Skype Meeting

Trouble Joining? [Try Skype Web App](#)

### Join by phone

Toll number: **Ex. 6 Personal Privacy (PP)** (Dial-in Number) English (United States)

[Find a local number](#)

Conference ID: **Ex. 6 Personal Privacy (PP)**

[Forgot your dial-in PIN?](#) [Help](#)

**From:** Bill Koetzle <KoetzleB@api.org>  
**Sent:** Thursday, March 19, 2020 9:32 AM  
**To:** Troy Lyons <tlyons@axpc.org>; Eisenberg, Ross <Ross\_Eisenberg@americanchemistry.com>; Rachel Jones <rjones@nam.org>; Derrick Morgan <DMorgan@afpm.org>  
**Cc:** Todd Mattingly <MattinglyT@api.org>  
**Subject:** standing call

All – First, hope all of you are well and taking care of yourself. Given the fluidity of our current environment, I thought it might be valuable for us to do a standing call to exchange information and provide mutual support. If you are like me, im on calls all day, but thought this would be useful. I would propose something late in the day, say 430 and see if that works. Todd can set us up a skype call. Let me know if this makes sense and is of interest and please extend to others you think would find useful. Take care

## Appointment

---

**From:** Bill Koetzle [KoetzleB@api.org]  
**Sent:** 3/24/2020 6:49:22 PM  
**To:** Bill Koetzle [KoetzleB@api.org]; Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Rachel Jones [rjones@nam.org]; Derrick Morgan [DMorgan@afpm.org]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Smythe Anderson [AndersonS@api.org]  
**CC:** Willis, Sharnett [Willis.Sharnett@epa.gov]  
**Subject:** Call with Trades  
**Location:** Call  
**Start:** 3/25/2020 8:00:00 PM  
**End:** 3/25/2020 9:00:00 PM  
**Show Time As:** Tentative

**Recurrence:** (none)

---

## Join Skype Meeting

Trouble Joining? [Try Skype Web App](#)

### Join by phone

Toll number: Ex. 6 Personal Privacy (PP) Dial-in Number)

English (United States)

[Find a local number](#)

Conference ID: Ex. 6 Personal Privacy (PP)

[Forgot your dial-in PIN?](#) | [Help](#)

Message

---

**From:** Rachel Jones [RJones@nam.org]  
**Sent:** 3/24/2020 7:03:16 PM  
**To:** Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Bill Koetzle [KoetzleB@api.org]; Laura Berkey-Ames [lberkeyames@nam.org]  
**CC:** Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Derrick Morgan [DMorgan@afpm.org]; Smythe Anderson [AndersonS@api.org]; Howard Feldman [Feldman@api.org]; Todd Mattingly [MattinglyT@api.org]  
**Subject:** Re: Telephone Call Today

Sorry for the confusion. Looping in Laura; she's running point for the NAM. I've been pulled away on

Ex. 6 Personal Privacy (PP)

Ex. 6 Personal Privacy (PP)

My apologies.

Rachel Jones

Ex. 6 Personal Privacy (PP)

---

**From:** Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Sent:** Tuesday, March 24, 2020 1:51:39 PM  
**To:** Bill Koetzle <KoetzleB@api.org>  
**Cc:** Rachel Jones <RJones@nam.org>; Troy Lyons <tlyons@axpc.org>; Eisenberg, Ross <Ross\_Eisenberg@americanchemistry.com>; Derrick Morgan <DMorgan@afpm.org>; Smythe Anderson <AndersonS@api.org>; Howard Feldman <Feldman@api.org>; Todd Mattingly <MattinglyT@api.org>  
**Subject:** RE: Telephone Call Today

Thank you. Todd, I'll have my scheduling folks follow-up directly with you.  
I look forward to talking to everyone soon.  
Mandy

---

**From:** Bill Koetzle <KoetzleB@api.org>  
**Sent:** Tuesday, March 24, 2020 1:50 PM  
**To:** Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Rachel Jones <rjones@nam.org>; Troy Lyons <tlyons@axpc.org>; Eisenberg, Ross <Ross\_Eisenberg@americanchemistry.com>; Derrick Morgan <DMorgan@afpm.org>; Smythe Anderson <AndersonS@api.org>; Howard Feldman <Feldman@api.org>; Todd Mattingly <MattinglyT@api.org>  
**Subject:** Telephone Call Today

Mandy, understand we need to find a new time for our call – Todd, cc'd above can help find a time and manage logistics, thank you and take care

## Appointment

---

**From:** MattinglyT@api.org [MattinglyT@api.org]  
**Sent:** 3/24/2020 6:48:33 PM  
**To:** Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Rachel Jones [rjones@nam.org]; Derrick Morgan [DMorgan@afpm.org]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Smythe Anderson [AndersonS@api.org]  
**CC:** Willis, Sharnett [Willis.Sharnett@epa.gov]

**Subject:** Call with Trades

**Location:** Call

**Start:** 3/25/2020 8:00:00 PM

**End:** 3/25/2020 9:00:00 PM

**Show Time As:** Tentative

**Recurrence:** (none)

---

## Join Skype Meeting

Trouble Joining? [Try Skype Web App](#)

### Join by phone

Toll number: **Ex. 6 Personal Privacy (PP)** Dial-in Number

English (United States)

[Find a local number](#)

Conference ID: **Ex. 6 Personal Privacy (PP)**

[Forgot your dial-in PIN?](#) | [Help](#)

Message

---

**From:** Troy Lyons [tlyons@axpc.org]  
**Sent:** 3/24/2020 5:51:46 PM  
**To:** Bill Koetzle [KoetzleB@api.org]  
**CC:** Rachel Jones [rjones@nam.org]; Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Derrick Morgan [DMorgan@afpm.org]; Smythe Anderson [AndersonS@api.org]; Howard Feldman [Feldman@api.org]; Todd Mattingly [MattinglyT@api.org]  
**Subject:** RE: Telephone Call Today

Please remove my from this chain. I am recused from communicating with EPA.

---

**From:** Bill Koetzle <KoetzleB@api.org>  
**Sent:** Tuesday, March 24, 2020 1:50 PM  
**To:** Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Rachel Jones <rjones@nam.org>; Troy Lyons <tlyons@axpc.org>; Eisenberg, Ross <Ross\_Eisenberg@americanchemistry.com>; Derrick Morgan <DMorgan@afpm.org>; Smythe Anderson <AndersonS@api.org>; Howard Feldman <Feldman@api.org>; Todd Mattingly <MattinglyT@api.org>  
**Subject:** Telephone Call Today

Mandy, understand we need to find a new time for our call – Todd, cc'd above can help find a time and manage logistics, thank you and take care

Message

---

**From:** Bill Koetzle [KoetzleB@api.org]  
**Sent:** 3/24/2020 5:50:22 PM  
**To:** Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**CC:** Rachel Jones [rjones@nam.org]; Troy Lyons [tlyons@axpc.org]; Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Derrick Morgan [DMorgan@afpm.org]; Smythe Anderson [AndersonS@api.org]; Howard Feldman [Feldman@api.org]; Todd Mattingly [MattinglyT@api.org]  
**Subject:** Telephone Call Today

Mandy, understand we need to find a new time for our call – Todd, cc'd above can help find a time and manage logistics, thank you and take care

Message

---

**From:** Smythe Anderson [AndersonS@api.org]  
**Sent:** 3/20/2020 5:11:16 PM  
**To:** Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**CC:** Will Hupman [HupmanW@api.org]  
**Subject:** API Letter to White House  
**Attachments:** 2020-03-20 API Letter to President Trump.pdf

Mandy –

Welcome back to EPA. Quite a week to start your new job.

I wanted to flag the attached letter from API CEO Mike Sommers to President Trump related to the COVID-19 pandemic. Of note, it requests a temporary waiver from non-essential compliance obligations at EPA, including seasonal fuel requirements and routine testing and reporting requirements.

Please let me know if you would like to discuss this in greater detail. I can make myself available at your convenience.

Regards,  
Smythe

**Smythe Anderson**

Director | Federal Relations  
American Petroleum Institute | 200 Massachusetts Ave NW | Washington, DC 20001

O: 202 682.8040

M: Ex. 6 Personal Privacy (PP)

[AndersonS@api.org](mailto:AndersonS@api.org)

[www.api.org](http://www.api.org)



**Michael J. Sommers**  
President & Chief Executive Officer  
API  
200 Massachusetts Avenue, NW  
Suite 1100  
Washington, DC 20001-5571  
202-682-8500  
sommersm@api.org

March 20, 2020

The Honorable Donald J. Trump  
President of the United States  
The White House  
Washington, DC 20500

Dear President Trump:

On behalf of the members of the American Petroleum Institute,<sup>1</sup> I would like to thank you for your leadership in our nation's response to the global crisis arising from COVID-19. The oil and natural gas industry, like other critical infrastructure sectors, is working tirelessly to ensure there is no interruption in our supply chains as a result of this pandemic. We play a critical role in providing affordable and reliable energy to American families and businesses, which is essential to maintain our national security and will drive our economic recovery. We have identified two potential overarching issues we would like to bring to your attention: critical infrastructure designations and temporary relief through non-essential compliance discretion necessitated by the need to follow appropriate guidelines to mitigate this pandemic.

### **Critical Infrastructure Designations**

As a result of the restrictions and guidelines issued by the President of the United States' Coronavirus Task Force, the Centers for Disease Control and Prevention, and potential decisions at the state and local levels, I am writing to request that the Administration and states recognize that API's members provide the necessary fuels that ensure products and services are delivered in a timely fashion around the country. Our supply chain is robust and complex. Ensuring that our entire supply chain is protected from these impacts to the fullest extent possible is of great importance and will enable our industry to continue to provide the fuels that power our communities.

---

<sup>1</sup> API represents all segments of America's oil and natural gas industry. Its more than 600 members produce, process, and distribute most of the nation's energy. The industry supports 10.9 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In its first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.



To achieve this goal, I request that your Administration ensure that state and local governments receive timely guidance on critical infrastructure personnel, including our employees. Such guidance should enable employees who provide critical support to our nation's infrastructure to reach their work locations and continue to provide their essential services. We worked with the Department of Homeland Security, through the Oil and Natural Gas Sector Coordinating Council, to ensure appropriate personnel were included in such guidance. We request your Administration's support in ensuring that this guidance reaches the appropriate state and local officials across the nation so that critical personnel designations are similar across different jurisdictions.

### **Non-essential Compliance Discretion**

We are grateful for the ongoing work of your Administration in providing appropriate guidelines for mitigation of the pandemic. In light of these guidelines, the oil and natural gas industry needs to maintain safe and reliable operations, taking into consideration that there may be limited personnel capacity to manage the full scope of the current regulatory requirements. As such, we will be requesting assistance in temporarily waiving non-essential compliance obligations from the relevant agencies and departments within your Administration and/or their state counterparts, and may include recordkeeping, training or other non-safety critical requirements. In the coming days and as events warrant, we will be providing these government entities with greater specificity regarding this request.

These types of requests could include, but are not limited to, issues such as:

- Department of Transportation
  - Hours of service limitations
  - Nonessential inspections
- Department of the Interior
  - Reporting and auditing requirements
  - Leasing and permitting considerations
  - Nonessential training
- Department of Homeland Security/Department of State
  - Foreign sourced goods
  - Resolution of visa issues



- Environmental Protection Agency
  - Waivers of seasonal fuel requirements (and relevant associated state waivers)
  - Routine testing and reporting requirements

In closing, the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat, and we look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis. Thank you for consideration of the requests outlined in this letter, and please do not hesitate to have your Administration contact API as we stand ready to assist in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Sommers", written over a horizontal line.

Michael J. Sommers

cc: U.S. Governors

## Appointment

---

**From:** Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F639EA28AF4C455493939E3129260707-GUNASEKARA,]  
**Sent:** 3/24/2020 6:51:27 PM  
**To:** Bill Koetzle [KoetzleB@api.org]  
**Subject:** Accepted: Call with Trades  
**Location:** Call  
**Start:** 3/25/2020 8:00:00 PM  
**End:** 3/25/2020 9:00:00 PM  
**Show Time As:** Busy

## Appointment

---

**From:** Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F639EA28AF4C455493939E3129260707-GUNASEKARA,]  
**Sent:** 3/24/2020 6:49:16 PM  
**To:** Bill Koetzle [KoetzleB@api.org]  
**Subject:** Declined: Call with Troy, Ross, Rachel, and Derrick  
**Location:** Call  
**Start:** 3/25/2020 8:00:00 PM  
**End:** 3/25/2020 9:00:00 PM  
**Show Time As:** Busy

Message

---

**From:** Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F639EA28AF4C455493939E3129260707-GUNASEKARA,]  
**Sent:** 3/24/2020 5:55:45 PM  
**To:** MattinglyT@api.org; Willis, Sharnett [Willis.Sharnett@epa.gov]  
**Subject:** Move COVID-19 Phone Call with Rachel Jones

Sharnett,

Can you work with Todd (cc'd) to move the NAM call we had originally set up with Rachel Jones? I've got another meeting that has popped up at the 4:30 time and Rachel Jones

**Ex. 6 Personal Privacy (PP)**

Thank you,

Mandy

Message

---

**From:** Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F639EA28AF4C455493939E3129260707-GUNASEKARA,]  
**Sent:** 3/24/2020 5:51:39 PM  
**To:** Bill Koetzle [KoetzleB@api.org]  
**CC:** Rachel Jones [rjones@nam.org]; Troy Lyons [tlyons@axpc.org]; Eisenberg, Ross [Ross\_Eisenberg@americanchemistry.com]; Derrick Morgan [DMorgan@afpm.org]; Smythe Anderson [AndersonS@api.org]; Howard Feldman [Feldman@api.org]; Todd Mattingly [MattinglyT@api.org]  
**Subject:** RE: Telephone Call Today

Thank you. Todd, I'll have my scheduling folks follow-up directly with you.  
I look forward to talking to everyone soon.  
Mandy

---

**From:** Bill Koetzle <KoetzleB@api.org>  
**Sent:** Tuesday, March 24, 2020 1:50 PM  
**To:** Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Cc:** Rachel Jones <rjones@nam.org>; Troy Lyons <tlyons@axpc.org>; Eisenberg, Ross <Ross\_Eisenberg@americanchemistry.com>; Derrick Morgan <DMorgan@afpm.org>; Smythe Anderson <AndersonS@api.org>; Howard Feldman <Feldman@api.org>; Todd Mattingly <MattinglyT@api.org>  
**Subject:** Telephone Call Today

Mandy, understand we need to find a new time for our call – Todd, cc'd above can help find a time and manage logistics, thank you and take care

Message

---

**From:** Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F639EA28AF4C455493939E3129260707-GUNASEKARA,]  
**Sent:** 3/23/2020 2:10:54 AM  
**To:** Smythe Anderson [AndersonS@api.org]  
**CC:** Will Hupman [HupmanW@api.org]  
**Subject:** Re: API Letter to White House

Smythe,

Thank you for the note. I've passed the letter on to Susan and her team. We are looking to have some public guidance on the compliance issues - that have been raised by a ton of folks - early this week.

As far as seasonal fuel requirements, Anne/Alex have been running point in OAR. They've had a number of meetings and will be following up soon.

I hope you are well!

Mandy

Sent from my iPhone

On Mar 20, 2020, at 1:11 PM, Smythe Anderson <AndersonS@api.org> wrote:

Mandy –

Welcome back to EPA. Quite a week to start your new job.

I wanted to flag the attached letter from API CEO Mike Sommers to President Trump related to the COVID-19 pandemic. Of note, it requests a temporary waiver from non-essential compliance obligations at EPA, including seasonal fuel requirements and routine testing and reporting requirements.

Please let me know if you would like to discuss this in greater detail. I can make myself available at your convenience.

Regards,  
Smythe

**Smythe Anderson**

Director | Federal Relations  
American Petroleum Institute | 200 Massachusetts Ave NW | Washington, DC 20001

O: 202.682.8040  
M: Ex. 6 Personal Privacy (PP)

[AndersonS@api.org](mailto:AndersonS@api.org)

[www.api.org](http://www.api.org)

<2020-03-20 API Letter to President Trump.pdf>

Message

---

**From:** Paul A. Hartman [HartmanP@api.org]  
**Sent:** 4/17/2020 8:43:47 PM  
**To:** Mia, Marcia [Mia.Marcia@epa.gov]; Shine, Brenda [Shine.Brenda@epa.gov]  
**CC:** David W. Murk [MurkD@api.org]; Peter Lidiak [plidiak@ILTA.ORG]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Secrest, Cary [Secrest.Cary@epa.gov]; Malave, Maria [Malave.Maria@epa.gov]  
**Subject:** Request for Clarification for Tank Inspections  
**Attachments:** ATT00001.txt; 041720 Subpart WW Seal Inspections Clarification FINAL.pdf

Dear Ms. Mia and Ms. Shine:

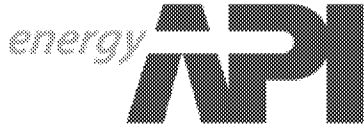
Attached please find a letter of ***Request for Clarification for Tank Inspections Under 40 CFR 63.1063(d)(1), Subpart WW*** from API and ILTA.

Please feel free to contact me should you have any questions or concerns. Have a great weekend.

Best,

Paul Hartman  
Sr. Policy Advisor – Midstream and Industry Operations  
American Petroleum Institute  
200 Massachusetts Ave, NW  
Washington, DC 20001  
Office (202) 682-8046  
Cell Ex. 6 Personal Privacy (PP)  
[HartmanP@api.org](mailto:HartmanP@api.org)





April 17, 2020

Marcia Mia  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
MAIL CODE: 2227A  
Washington, DC 20460

Brenda Shine  
Environmental Protection Agency  
109 T.W. Alexander Drive  
MAILCODE: E143-01  
Research Triangle Park, NC 27709

***RE: Request for Clarification for Tank Inspections Under 40 CFR 63.1063(d)(1), Subpart WW***

Dear Ms. Mia and Ms. Shine:

On behalf of the members of the American Petroleum Institute (API) and the International Liquid Terminals Association (ILTA), we respectfully submit this letter for clarification.

API represents all segments of America's oil and natural gas industry. Its more than 600 members produce, process, and distribute most of the nation's energy. The industry supports 10.9 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In its first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.

The International Liquid Terminals Association represents more than 85 companies operating liquid terminals in all 50 states and in over 40 countries. Our members' facilities provide critical links between all modes of transportation for liquid commodities, such as crude oil, petroleum products, chemicals, renewable fuels, fertilizer, vegetable oils and other food-grade materials that are central to the U.S. economy. Terminals provide essential logistics services that spur trade both within the United States and connect the U.S. economy with overseas markets. ILTA's membership also includes about 400 companies that supply equipment and services to the terminal industry.

For facilities that operate internal floating roof (IFR) and external floating roof (EFR) tanks subject to 40 C.F.R. 63, Subpart WW – National Emission Standards for Storage Vessels (Tanks) – Control Level 2 (Subpart WW), the inspection requirement at 40 C.F.R. §63.1063(d)(1), states, in pertinent part:

- (1) Floating roof (IFR and EFR) inspections shall be conducted by visually inspecting the floating roof deck, deck fittings, and rim seals from within the storage vessel. The inspection may be performed entirely from the top side of the floating roof, as long as there is visual access to all deck components specified in paragraph (a) of this section. Any of the conditions described in paragraphs (d)(1)(i) through (d)(1)(v) of this section constitutes inspection failure.
  - (i) Stored liquid on the floating roof.
  - (ii) Holes or tears in the primary or secondary seal (if one is present).
  - (iii) Floating roof deck, deck fittings, or rim seals that are not functioning as designed (as specified in paragraph (a) of this section).
  - (iv) Failure to comply with the operational requirements of paragraph (b) of this section.
  - (v) ***Gaps of more than 0.32 centimeters (1/8 inch) between any deck fitting gasket, seal, or wiper (required by paragraph (a) of this section) and any surface that it is intended to seal.***

For purposes of the requested national alternative monitoring plan (AMP) for in-service tank seal inspections, API and ILTA requests confirmation in its interpretation that 40 C.F.R. §63.1063(d)(1)(v) does not apply to the rim seal. While the requested AMP would not apply to Subpart WW-regulated tanks (as this regulation unambiguously allow in-service inspections), EPA has represented in discussions that for it to issue a national AMP specifically allowing in-service tank seal inspections the AMP would have to include more stringent criteria from Subpart WW. EPA representatives indicated that they believed the term “seal” is to include “rim seals” in regard to Subpart WW’s 1/8-inch gap failure criteria. Based on the plain reading of the rule, use of the term “rim seal” elsewhere in the rule, the rulemaking history, Subpart WW EFR-specific rim seal inspection protocols, and statements in the new AP-42 Chapter 7: Liquid Storage Tanks, API and ILTA believe that the 1/8 inch gap failure criteria was not intended to apply to rim seals and asks for confirmation of this interpretation for purposes of the AMP.

The plain reading of Subpart WW suggests that the “gasket, seal, or wiper” phrase in §63.1063(d)(1)(v) is specifically applicable to the closure of deck fittings and not to the fit of rim seals. The “gasket, seal, or wiper” phrase is a series of nouns having similar meaning. This phrase is preceded in the sentence by the words “deck fitting,” which are positioned to serve as an adjective modifying the nouns that follow. Thus, the gaskets, seals, and wipers in question are those gaskets, seals, and wipers associated with deck fittings.

The terms “liquid-mounted seal”, “mechanical shoe seal”, and “vapor-mounted seal” are each defined at §63.1061 as referring to “rim seals”, and the term “rim seal” is defined as spanning the annular space between the floating roof deck and the wall of the storage vessel.

Further review of the rule text reveals that the only usage of the word “seal” that is not expressly qualified as referring to “rim seals” is in the deck fitting design requirements of §63.1063(a)(2) and the inspection requirement of §63.1063(d)(1)(v) suggesting this condition does not apply to the rim seal. Specifically, §63.1063(d)(1) quoted in whole above requires the visual inspection of “deck fittings, and rim seals.”

The rulemaking history of Subpart WW suggests that the 1/8-inch gap failure criteria was only intended to apply to deck fittings. The proposed rule published in the Federal Register read as follows under the listing of conditions constituting an inspection failure:

Gaps of more than 0.32 centimeters (1/8 inch) between any deck fitting gasket (required by paragraph (a) of this section) and any surface that it is intended to seal.

63 FR 55257.

The final rule language augmented the reference to “gasket” with “seal, or wiper” in acknowledgement that the specified controls for certain deck fittings were described as seals or wipers:

Gaps of more than 0.32 centimeters (1/8 inch) between any deck fitting gasket, seal, or wiper (required by paragraph (a) of this section) and any surface that it is intended to seal.

There is no explanation of the addition of “seal, or wiper” in the rulemaking, but if the addition was designed to significantly increase the stringency of Subpart WW by applying a 1/8 inch gap failure criteria to rim seals as compared to comparable storage tank rules, such change would have warranted explanation. To now read the word “seal” to apply to seals beyond deck fittings neglects the history of the rule that §63.1063(d)(1)(v) was originally drafted to solely apply to deck fitting closures.

Additionally, as Section 63.1063(d)(1) applies to both “IFR and EFR” floating roofs, interpreting this section to impose a 1/8-inch rim seal gap limit renders Subpart WW’s specific EFR rim seal gap inspection protocol (§63.1063(d)(3)) superfluous. Subpart WW’s EFR rim seal inspection criteria has a specific primary rim seal gap maximum of 3.81 centimeters (1.5 inches). §63.1063(d)(3)(ii). For the EFR secondary seal, “the maximum gap width shall not exceed 1.27 centimeters (0.5 inches), except when the secondary seal must be pulled back or removed to inspect the primary seal.” §63.1063(d)(3)(iii). Subpart WW also requires that for the inspection of EFR rim seals, inspectors use a 1/8-inch diameter probe to identify gaps and calculate the area of all gaps over 1/8 inch. Thus, a 1/8-inch gap in an EFR rim seal does not necessarily indicate inspection failure. If the 1/8-inch gap failure criteria applied to rim seals, then EPA would have had no reason to include additional EFR rim seal gap inspection protocols for gaps larger than 1/8 inches. As interpreting the 1/8-inch gap failure criteria to apply to rim seals renders a significant portion of Subpart WW useless, it is fair to assume that EPA did not intend this interpretation.

Finally, EPA’s new AP-42, Fifth Edition, Volume I, Chapter 7: Liquid Storage Tanks indicates that “average” tanks currently in service would not pass Subpart WW’s 1/8-inch gap failure criteria is applied to rim seals. AP-42 defines a new category of especially tight rim seals called “tight-fitting seals.” Table 7.1-8 . “Tight-fitting” is defined as meaning “that the rim seal is maintained with no gaps greater than 1/8 in. wide between the rim seal and the tank shell.” Referencing a value in the “average-fitting seal” category, the guidance further states that “If no specific [rim seal] information is available, this value can be assumed to represent the most common or typical rim-seal system currently in use for internal floating roof tanks.” In other words, EPA’s own guidance suggests that the “typical rim-seal system currently in use” for IFRs does not fit its 1/8-inch rim seal limit category.

For purposes of the requested AMP to specifically allow for in-service tank seal inspections, API and ILTA asks for confirmation that the term "seal" does not include "rim seals" in regard to Subpart WW's 1/8 inch gap failure criteria and that an AMP incorporating Subpart WW's more stringent provisions would not include this misinterpretation.

Respectfully,

A handwritten signature in black ink, appearing to read "David Murk". The signature is fluid and cursive, with a large loop at the end.

David Murk  
Manager, Pipeline  
American Petroleum Institute  
200 Massachusetts Avenue NW  
Suite 1100  
Washington, DC 20001-5571

A handwritten signature in black ink, appearing to read "Peter Lidiak". The signature is cursive and elegant, with a long, sweeping underline.

Peter Lidiak  
Vice President of Government Affairs  
International Liquid Terminals Association  
1005 N. Glebe Road, Suite 600  
Arlington, VA 22201 USA

Cc: Cary Secrest - [Secrest.Cary@epa.gov](mailto:Secrest.Cary@epa.gov)  
Maria Malave - [Malave.Maria@epa.gov](mailto:Malave.Maria@epa.gov)  
Larry Starfield - [starfield.lawrence@epa.gov](mailto:starfield.lawrence@epa.gov)